

John P. Fitzgerald, III
Acting United States Trustee
For Region 4
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**United States Bankruptcy Court
Eastern District of Virginia
Alexandria Division**

In re:

Dynamic Sports Performance, LLC,

Case No. 20-12322-KHK

Debtor.

Chapter 11

Hearing: December 15, 2020, at 11:00 am

Motion to Dismiss

Summary

This case is a two-party dispute. The Debtor has one creditor. The creditor's claim is for \$20,139 and is disputed. It appears that this bankruptcy was filed to stay litigation in Alexandria General District Court regarding the claim. The Debtor's attorney was paid \$729 to file this bankruptcy. It does not belong in federal court. It should be dismissed.

In support of this motion the following representations are made:

1. The Court has authority to hear and decide this matter. 28 U.S.C. Section 1334.
2. This is a core matter. 28 U.S.C. Section 157(b)(2)(A).
3. On October 21, 2020, the Debtor filed this case. Docket No. 1.
4. The Debtor marked that it is a small business debtor as defined in 11 U.S.C. § 101(51D)

and chose to proceed under Subchapter V of Chapter 11. Voluntary Petition for Non-

Individuals Filing for Bankruptcy, Docket No. 1.

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5. On October 22, 2020, the Acting United States Trustee for Region 4 appointed Jolene Wee as the Subchapter V Trustee. Docket No. 7.
6. The Debtor has no real property. Summary of Assets and Liabilities, Docket No. 16, page 2.
7. The Debtor has \$20,139 in a business checking account and \$3,700 deposit with its previous landlord. Schedule A/B Assets – Real and Personal, Docket No. 16, page 3.
8. The Debtor also has 30 kettle bells valued at \$5,400. (A kettle bell is a round weight with a flat bottom and thick handle on top used for weight training.) valued at \$4,500. Schedule A/B Assets – Real and Personal, Docket No. 16, page 4.
9. These three items are the Debtor’s total assets, valued at \$28,339. Schedule A/B Assets – Real and Personal, Docket No. 16, page 20.
10. There are no creditors who have claims secured by property. Schedule D: Creditors Who Have Claims Secured by Property, Docket No. 16, page 7.
11. There is one unsecured creditor, Old Town # 1, LLC with a claim for \$20,139. The basis of the claim is a business lease. The claim is disputed. Schedule E/F: Creditors Who Have Unsecured Claims, Docket No. 16, page 8.
12. The Debtor has no codebtors. Schedule H: Your Codebtors, Docket No. 16, page 10.
13. The Debtor has no executory contracts. Schedule G: Executory Contracts and Unexpired Leases, Docket No. 16, page 9.
14. Within one year of the filing of this case the Debtor was involved in one legal action. The matter was Old Town #1, LLC v. Dynamic Sports Performance, LLC. This involved a garnishment summons in the Alexandria City General District Court. Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy, Docket No. 16, page 12.

Argument

The Court, for cause, after notice and hearing, may dismiss or convert a case to a case under chapter 7, whichever is in the best interests of the creditors and the estate. 11 U.S.C. § 1112(b)(1).

The test for deciding whether to dismiss or convert a chapter 11 case is a finding of objective futility and subjective bad faith. Carolin Corp. v. Miller, 886 F.2d 693, 695 (4th Cir. 1989).

There is no definition of “good faith” in the Bankruptcy Code. This finding is fact-specific. In re Sawyer, No. 07-10252-SSM, 2007 WL 1725627, at *5 (Bankr. E.D. Va. June 13, 2007), opinion corrected, No. 07-10252 SSM, 2007 WL 2110314 (Bankr. E.D. Va. July 17, 2007).

“The objective futility inquiry is designed to insure that there is embodied in the petition some relation to the statutory objective of resuscitating a financially troubled [debtor].” In re Paolini, 312 B.R. 295, 304 (Bankr. E.D. Va. 2004) (citation omitted) (quotation marks omitted).

The Debtor was engaged in litigation in state court at the time of filing.

This case is a two-party dispute. It is well established that two party disputes do not belong in bankruptcy. A two-party civil lawsuit involving state law that was brought before a federal Bankruptcy Court’ was an abuse of the Bankruptcy Code); *In re Panache Dev. Co., Inc.*, 123 B.R. 929, 932 (Bankr.S.D.Fla.1991).

In In re Arm Ventures, LLC 564 B.R. 77 (Bankr. S.D. FL 2017), the court listed the following factors to be considered in deciding whether to dismiss or convert a case:

Factors to be Considered

- only one asset

Debtor’s Circumstances

three assets;

- few unsecured creditors one unsecured creditor;
- few employees principal is the only employee;
- foreclosure pending state court proceeding with sole creditor

The United States Trustee cannot find and specifically identify any unusual circumstances establishing that dismissing this case is not in best interests of the creditors and the estate.

Wherefore, the Acting United States Trustee for Region 4 moves the Court to dismiss this case.

John P. Fitzgerald, III
Acting United States Trustee
For Region 4

/s/ Jack Frankel
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Certificate of Service

I hereby certify that on the 8th day of November, 2020, I mailed, United States mail, first class, postage prepaid, a true copy of this motion and notice of motion and hearing to the Debtor and e-mailed a copy to the Debtor's attorney to and Jolene E. Wee, Chapter V Trustee.

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/s/ Jack Frankel